

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

HORACE MILTON BLACK	)	
	)	
<i>Petitioner</i>	)	
v.	)	2:05cv1178-WKW
	)	
UNITED STATES OF AMERICA	)	
	)	
<i>Respondent</i>	)	

**FINAL PRE-HEARING ORDER**

Pursuant to the pre-hearing conference with counsel convened this day, it is  
**ORDERED** as follows:

**1. Hearing Date; Plaintiff's Appearance**

The evidentiary hearing shall proceed as scheduled on October 11, 2006, commencing at 10:00 a.m. in District Courtroom 4A before the undersigned Magistrate Judge.

The United States Attorney is DIRECTED to secure the presence of the Petitioner, Horace Milton Black, from his federal custodial confinement in South Carolina to this Middle District of Alabama, not later than October 4, 2006, through completion of the scheduled evidentiary hearing on October 11, 2006. The court directs the Petitioner's presence a week in advance of the scheduled hearing in order to facilitate his necessary and desired communications with appointed counsel, Pate DeBardelaben, in preparation for direct examination and cross-examination at the hearing.

**2. ISSUE SUBMITTED**

A single issue is submitted for evidentiary hearing: the alleged ineffectiveness of

Petitioner's trial counsel, Terry R. Smyly, in failing to file an appeal on his behalf.

This issue is specified as no. 2 and no.3 in the *Final Statement of Claims Pursued* in Section 2255 Motion filed on July 21, 2006, by appointed counsel (Doc. 27). Though the issue stated as no. 3 appears to implicate other concerns, the court understands from counsel's report that it relates as well to Petitioner's belief that trial counsel neglected to appeal the district court's refusal to permit him to withdraw his guilty plea upon Petitioner's first notice that he would be sentenced as a career offender based on a juvenile offense reported in state records. The court will permit only such evidence as is reasonably necessary to clarify the Petitioner's asserted claim of ineffectiveness of trial counsel with regard to Petitioner's desire to appeal from the district court's acceptance of the plea agreement over Petitioner's objection and his consequent sentencing.

**3. WITNESSES AND EXHIBITS**

Counsel shall exchange, and file with the court, lists of "hearing" witnesses and exhibits, not later than October 2, 2006.

All exhibits shall be pre-marked using the same numbers indicated on the exhibit lists, and each party shall deliver to the courtroom deputy prior to commencement of the hearing the "original", pre-marked exhibits, along with a copy of exhibits for use by the court.

DONE this 7<sup>th</sup> day of September, 2006.

/s/ Delores R. Boyd  
DELORES R. BOYD  
UNITED STATES MAGISTRATE JUDGE